

UNITED STATES COURT OF APPEALS
TENTH CIRCUIT

DEC 21 1999

PATRICK FISHER
Clerk

LEO SIMMONS,

Plaintiff - Appellant,

v.

[NO APPELLEE NAMED ON
APPEAL]

No. 99-1395

(D. Colorado)

(D.C. No. 99-Z-1223)

ORDER AND JUDGMENT *

Before **ANDERSON** , **KELLY** , and **BRISCOE** , Circuit Judges.

After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist the determination of this appeal. See Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

Leo Simmons appeals the dismissal, without prejudice, of his civil rights action naming John Suthers, generally seeking “to compel the Department of

*This order and judgment is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. The court generally disfavors the citation of orders and judgments; nevertheless, an order and judgment may be cited under the terms and conditions of 10th Cir. R. 36.3.

Corrections to stop the hindering of the accesses to the court, and to produce all the materials that are requested by court order.” The district court determined that the document filed by Mr. Simmons was insufficient to serve as a complaint and ordered that proper forms be sent to Mr. Simmons for filing. Mr. Simmons filed a motion for appointment of counsel, but did not file the forms which the district court clerk had forwarded to him. Thereafter the district court dismissed the case without prejudice. The document filed in this court by Mr. Simmons names no defendant/appellee and contains only general statements that his rights are being violated by his not being afforded a fair hearing.

Upon review of the entire file, we conclude that the appeal lacks an arguable basis either in law or in fact. Accordingly, the appeal is frivolous within the meaning of 28 U.S.C. § 1915(e)(2)(B)(i), and therefore must be dismissed. This dismissal shall count as a “prior occasion” for purposes of 28 U.S.C. § 1915(g). The motions pending on appeal are DENIED, and the appeal is DISMISSED. Mr. Simmons continues to be obligated for installment payments of the filing fee in this court. The mandate shall issue forthwith.

ENTERED FOR THE COURT

Stephen H. Anderson
Circuit Judge